

IN THE CIRCUIT COURT OF SUNFLOWER COUNTY, MISSISSIPPI

IN THE MATTER OF JAMES BOBO

UNNUMBERED

TRANSCRIPT OF THE PROCEEDINGS HAD AND DONE IN THE
PROBABLE CAUSE HEARING OF THE ABOVE STYLE CAUSE, BEFORE
THE HONORABLE ASHLEY HINES, CIRCUIT JUDGE,
ON THE 13TH DAY OF MARCH 2017

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P R O C E E D I N G S

BY THE COURT: This is a probable cause hearing on Officer James Bobo. It's an unnumbered case. You may proceed.

BY MR. AUSTIN: Your Honor, there's a motion before the Court and I don't know if Mr. Jerscheid -- you want to argue that motion?

BY MR. JERSCHEID: May it please the Court, your Honor?

BY THE COURT: You may.

BY MR. JERSCHEID: Your Honor, my name is Erich Jerscheid. It's spelled J-e-r-s-c-h-e-i-d. And before the Court today is an amended motion regarding my client Jim Bobo's request for the Court to strike the affidavit, stay the proceedings and to stop this even from going forward.

Your Honor, there is some statutory, inventory language that's cited in the motion that my client would be entitled to a judgment against Earnest Lee, and the affidavit that's here today, your Honor, as far as this probable cause hearing it sets a dangerous precedent.

We've got a police officer who someone has sought a peace bond against him during the course of an investigation.

1 Your Honor, candidly, that stymies law
2 enforcement's ability to be able to go forward in
3 investigations in the event that there is some
4 complaint about how the police officer handles it.

5 And quite frankly, your Honor, to the
6 extent that the statute requires my client to have
7 a probable cause hearing, it removes any
8 prosecutorial discretion, I believe, from the
9 prosecutor being able to make an independent
10 judgment simply by virtue of a couple of attorney
11 general opinions.

12 BY THE COURT: You do realize that the
13 statutory scheme is for the protection of the
14 officers, don't you?

15 BY MR. JERSCHIED: Yes, your Honor, I do.

16 BY THE COURT: All right.

17 BY MR. JERSCHIED: And just a couple of
18 points that I would ask the Court to take into
19 consideration or hold in abeyance.

20 Your Honor, the affidavit doesn't charge my
21 client with a criminal offense. It doesn't charge
22 him under any statute, and quite frankly I don't
23 think the law supports Earnest Lee having standing
24 to seek a petition on behalf of the State of
25 Mississippi.

1 Second point, your Honor, he would be
2 filing this certainly as a private citizen and
3 acknowledging Mr. Lee's right to petition the
4 government.

5 A private citizen has no general interest
6 to determine whether any form of prosecution is
7 proper, and on that point, your Honor, it would
8 respectfully be put before the Court that the
9 statute violates my client's rights under the equal
10 protection clause. And two, that Mr. Lee has no
11 standing to seek relief on behalf of the State of
12 Mississippi.

13 The last point, your Honor, is that this is
14 a matter that has been investigated internally by
15 Central Department of Corrections personnel, and by
16 Central I mean the executive administration.

17 And I believe there will be a report put
18 before the Court today that the allegations that
19 Mr. Lee has made came long after an investigation
20 was completed.

21 Now, as part of that investigation, your
22 Honor, the evidence will speak for itself that a
23 thorough investigation was completed.

24 It was an independent investigation. It
25 was done by what would otherwise be an internal

1 affairs group through the state level at the state
2 agency through the Department of Corrections.

3 To that end, your Honor, the matter has
4 already been litigated. I believe that any action
5 that has been taken has been taken by the
6 Department of Corrections administration.

7 And for those reasons, your Honor, and the
8 facts would show -- or that they would not show in
9 the actual report itself that was considered by the
10 state, there are simply no facts showing that my
11 client had any wrongdoing.

12 So for those reasons, your Honor, we would
13 ask that the Court would grant the instant motion
14 the amended -- first amended notice of special
15 appearance, and we're seeking relief under Rule 65
16 as well as extraordinary relief by statute and
17 request that the Court enter a judgment against
18 Earnest Lee according to Section 11-41-1 of the
19 Mississippi Code. Thank you.

20 BY THE COURT: Very well.

21 BY MR. AUSTIN: Your Honor, as you're aware
22 I'm mandated to do these hearings and I do not have
23 any discretion.

24 However, Mr. Lee has filed an affidavit
25 that he was assaulted which constitutes a crime in

Earnest Lee - Direct

1 the state. No warrant has been issued until this
2 hearing has been held.

3 Rule 65, I believe, of the Rule of Civil
4 Procedure, this is criminal, and regardless of what
5 CID -- and he is aware that was their report but,
6 however, I don't have that discretion. I have to
7 have this hearing unless the Court rules otherwise.

8 BY THE COURT: All right. Well, I'll take
9 that under advisement and we will proceed with the
10 hearing at this time.

11 BY MR. AUSTIN: All right. The first
12 witness, your Honor, will be Mr. Eddie Lee.

13 **EARNEST LEE,**

14 called on behalf of the State, having been duly sworn by
15 the clerk, was examined and testified as follows:

16 **DIRECT EXAMINATION BY MR. AUSTIN:**

17 Q. Mr. Lee, would you state your name, please.

18 A. Earnest Lee.

19 Q. And where are you employed?

20 A. Mississippi Department of Corrections.

21 Q. What is your position?

22 A. Superintendent.

23 Q. I believe you have filed an affidavit
24 alleging that Mr. Bobo assaulted you, is that correct?

25 A. Yes, sir.

1 Q. And what date?

2 A. November the 21st, 2016.

3 Q. Did that occur at Parchman which is part of
4 Sunflower County?

5 A. Yes, sir.

6 Q. Just tell the Court what happened.

7 A. It was during the course of an incident that
8 took place and I went over to -- my supervisor instructed
9 me to go over to see what was going on during the
10 incident.

11 And once I arrived over there CID was talking to
12 the suspect and I asked to talk to the individual, and
13 during the course of me being there Mr. Bobo, he came up
14 and placed his hand on me and I told him not to put his
15 hand on me.

16 And his supervisor instructed him as well, Mr.
17 Rogers, John Rogers, and during the course of that
18 incident Mr. Bobo came back up and grabbed me by my wrist
19 for a second time.

20 Q. You said your supervisor. You're the
21 superintendent, so you don't have a supervisor. So who
22 are you talking about?

23 A. Mr. Jerry Williams, out of central office.
24 He's the deputy commissioner of the institution.

25 Q. Okay. So he's your boss?

1 A. Yes, he is.

2 Q. Okay. I didn't understand that. So he
3 touched you at one time and he came back later and
4 grabbed your wrist, is that what you're telling us?

5 A. Yes, sir.

6 Q. And what were you doing at the time?

7 A. Well, during that time when he grabbed my
8 wrist I grabbed his wrist, and then various staff
9 separated the both of us.

10 Q. I have spoken with Officer Rogers. He said
11 he was around the corner, so he did not see any of these
12 incidents, would that be correct? I know he was present
13 but he wasn't actually there with you.

14 A. No, that's not correct. That's the first
15 time. During the course of the incident Mr. Rogers had
16 left out and I had gotten the officer and told the
17 officer we was leaving the conference room, and once I
18 entered the hallway Mr. Bobo was out in the hallway.

19 Once I entered the hallway Mr. Bobo come running
20 toward me and grabbed me at that point. Now, at that
21 point Mr. Rogers, he wasn't in the vicinity, he was in
22 another office. When Mr. Bobo grabbed me by my wrist Mr.
23 Rogers was inside the office.

24 BY MR. AUSTIN: Okay. That's all I have,
25 your Honor.

1 BY THE COURT: Any cross-examination of
2 this witness?

3 BY MR. JERSCHIED: Yes, your Honor.

4 BY THE COURT: You may proceed.

5 **CROSS-EXAMINATION BY MR. JERSCHIED:**

6 Q. Mr. Lee, my name is Erich Jerscheid. I
7 represent Jim Bobo. Let me ask you some yes or no
8 questions. For some reason you have any misunderstanding
9 of it, please let me know and I will be glad to rephrase
10 it for you. Okay?

11 A. Yes, sir.

12 Q. All right. Just a few minutes ago I believe
13 you testified that you submitted this affidavit on
14 November 21st of 2016, is that correct?

15 A. Correct.

16 Q. And that would not be an accurate statement,
17 would that be correct?

18 A. Say that again.

19 Q. And that would not be an accurate statement,
20 would that be correct?

21 A. Accurate statement on what?

22 Q. Is that an inaccurate statement?

23 A. I submitted it when?

24 Q. I'm asking you the questions, sir.

25 A. Right. What's the question?

1 Q. what day did you submit?

2 A. I don't exactly know what day I submitted it.

3 BY MR. AUSTIN: Your Honor, I would object
4 to that line of testimony. It's not relevant. You
5 can make an affidavit and say anything you want.
6 There's no prohibition.

7 BY THE COURT: I'll sustain the objection.

8 BY THE WITNESS: I would have to look on my
9 paperwork to see exactly what date.

10 Q. Superintendent Lee, you also testified
11 earlier that there were two grabs by the wrist. Do you
12 recall filling out an affidavit in this?

13 A. Yes, I do.

14 Q. Has it been a little while since you looked
15 at it?

16 A. Yes.

17 Q. Is there anything on this affidavit that
18 might help refresh your recollection? We're talking
19 about the events that occurred on November 21st, the
20 events that you've alleged in the affidavit.

21 A. What?

22 Q. We're talking about the events that you've
23 alleged in this affidavit.

24 A. Right.

25 Q. And I'm going back to the events that you've

1 actually alleged in the affidavit versus what your
2 testimony was just a few minutes ago.

3 A. Right.

4 Q. So would your affidavit help refresh your
5 recollection?

6 A. would it help? No, it wouldn't.

7 Q. Okay. So you're having a tough time
8 remembering what happened that day?

9 A. No.

10 Q. Mr. Lee, I believe that you also made a point
11 in this affidavit that you suffered bodily injuries?

12 A. In that affidavit it's not the complete
13 incident that took place.

14 Q. So it's only a partial affidavit?

15 A. It's not the complete incident that took
16 place in the affidavit. It's just the fact that Mr. Bobo
17 assaulted me.

18 Q. So what injuries were caused to you, sir?

19 A. Physical contact.

20 Q. And bare physical contact is what you
21 consider to be bodily injury? Yes?

22 A. Yes, sir.

23 Q. And you work at the Mississippi State
24 Penitentiary, correct?

25 A. Correct.

1 Q. And how many inmates do y'all house out
2 there?

3 A. We have close to 35 names.

4 Q. And so it's safe to say you probably get
5 bumped into a fair amount?

6 A. Not that I know, sir.

7 Q. I believe also earlier you testified that you
8 were speaking with someone who was being investigated by
9 CID?

10 A. Yes.

11 Q. And at that time that you spoke with that
12 individual, you were aware that they were under an
13 investigation, correct?

14 A. During the time I spoke with the individual,
15 I was aware that he had been assaulted by CID.

16 Q. But at the time that you went in to speak
17 with this particular officer, you were placed on notice,
18 sir, that CID was performing or was in the middle of a
19 law enforcement investigation, correct?

20 A. No. My warden called me and told me that CID
21 had just assaulted an officer, that's why I went over
22 there.

23 Q. And which warden would that be?

24 A. Warden Timothy Morris.

25 Q. And so the claim that this officer had been

1 assaulted by CID officers, correct, your testimony is
2 that that was the basis for your entry into the room?

3 A. Correct.

4 Q. And how did warden Morris call you?

5 A. By phone.

6 Q. And how long had this particular officer been
7 in the room at the time that you had gone in there?

8 A. I don't have any knowledge. I was not there.

9 BY MR. JERSCHEID: Court's indulgence.

10 BY THE COURT: Very well.

11 Q. Mr. Lee, did you ever go seek any medical
12 evaluation?

13 A. No, sir.

14 Q. And why don't you show us exactly how my
15 client put his hands on you. Let's start with the first
16 one. How did he do it?

17 BY MR. JERSCHEID: And Judge, if he can
18 stand and show us, please?

19 BY THE COURT: Very well. You may.

20 BY THE WITNESS: The first time he came he
21 put his hand, he grabbed me by my left wrist and I
22 grabbed him by his left wrist. The second time he
23 ran into me when I came out in the hallway and
24 grabbed me.

25 Q. And that first time that you were talking

1 about he grabbed your wrist, you said it was the what,
2 the left wrist?

3 A. Yes, sir.

4 Q. So he would have grabbed your left wrist with
5 his right?

6 A. I don't know.

7 Q. And what about the second time, Mr. Lee?

8 A. Second time what?

9 Q. The second time you testified earlier that he
10 grabbed you.

11 A. What about it?

12 Q. I'm asking you to show us a demonstration of
13 that as well?

14 A. He ran into me like this, like he was coming
15 to subdue me.

16 Q. Superintendent Lee, at what point did you
17 slap my client in the face?

18 A. When he ran into me and grabbed me.

19 Q. Out in the hallway?

20 A. Right, in the hallway, yes.

21 Q. And show us again how he approached you?

22 A. Which one?

23 Q. The second time.

24 A. He came at me like that.

25 Q. Were there any other officers around?

1 A. Yes, sir.

2 Q. CID officers?

3 A. Yes, sir.

4 Q. And which officers would those be?

5 A. I know Mr. William Carter for one. I know
6 because he was in the office with me on the CID side. I
7 don't know about any of the other CID staff.

8 Q. And did you put your hands on anybody else
9 that day, Mr. Lee?

10 A. No, I didn't.

11 Q. It's your testimony before the Court today
12 that you didn't put your hands on any other CID
13 investigator?

14 A. That's correct.

15 BY MR. JERSCHIED: A brief moment, your
16 Honor.

17 BY THE COURT: Very well.

18 Q. Mr. Lee, are you aware what these officers
19 were investigating at the time that you went into the
20 room?

21 A. No, I wasn't.

22 Q. If they were investigating an inmate assault,
23 would that surprise you?

24 A. Say that again.

25 Q. If they were investigating an inmate assault,

1 would that surprise you?

2 A. Would it surprise me?

3 Q. Correct.

4 A. No. That's part of their job.

5 Q. But on this particular day you decided that
6 you wanted to stop what they were doing?

7 A. On that particular day I decided to go over
8 there because my warden called and said that they had the
9 officer on the floor assaulting the officer.

10 Q. And that officer is not here today, correct?

11 A. I don't see him.

12 Q. Now, you would agree with me, Superintendent
13 Lee, that the particular officer who was subdued was
14 rather large, would you agree with that?

15 A. Yes.

16 Q. And it sometimes takes a little bit more to
17 get large individuals down than it does short people like
18 me, agree?

19 A. I don't know.

20 BY MR. AUSTIN: Your Honor, it's
21 interesting testimony of Mr. Lee, but what Mr. Lee
22 may have perceived about another officer is not
23 relevant.

24 BY THE COURT: well, I will sustain that
25 objection.

1 Q. Mr. Lee, at what point were you blocking the
2 door?

3 A. At what point I was blocking the door?

4 Q. Correct. At what point were you blocking the
5 door?

6 A. The officer was sitting right next to the
7 door so I was standing right -- as soon as I went in the
8 officer was right next to the door. So all the time I
9 was in the conference room I was at the door.

10 Q. And at any time did you refuse to allow a CID
11 officer to leave?

12 A. No.

13 Q. You never blocked anybody's access?

14 A. I was standing at the door. He could have
15 went around me.

16 Q. Do you recall saying anything to that
17 officer?

18 A. Yes, I spoke to the officer.

19 Q. And do you recall whether he attempted to go
20 around you?

21 A. What officer?

22 Q. My client.

23 A. You're talking about CID. He's not an
24 officer, he's CID. So when you said officer I thought
25 you was talking about Officer Tyler, the officer that was

1 being assaulted.

2 Q. No. We're here on this one.

3 A. Well, the only thing I said to Mr. Bobo was
4 told him not to put his hand on me.

5 Q. Because why?

6 A. Because why?

7 Q. Yes, sir. Why?

8 A. Because he shouldn't put his hand on me.

9 Q. You threaten him back?

10 A. Did I threaten him back?

11 Q. Correct.

12 A. He didn't never threaten me. I didn't never
13 threaten him. I just told him not to put his hand on me.

14 Q. And he didn't in fact put his hands on you,
15 did he?

16 A. I didn't understand what you said.

17 Q. He did not in fact put his hands on you.

18 A. Yes, he did. He put his hands on me.

19 Q. At the time he was attempting to walk out?

20 A. At the time he was attempting to walk out, I
21 don't know nothing about the time he was attempting to
22 walk out, because there was so much going on I was
23 talking to about two or three people at the same time
24 during the course of the incident.

25 Q. There were a lot of distractions, correct?

1 A. A lot of things going on at the same time.

2 Q. And there was in fact another officer who was
3 involved after you slapped my client in the face,
4 correct, another CID investigator?

5 BY MR. AUSTIN: Your Honor, the questions
6 concerning slapping Mr. Bobo tend to be questions
7 that caused Mr. Bobo to charge Mr. Lee and
8 therefore he is not required to testify regarding
9 slapping Mr. Bobo. He has a good right not to do
10 so.

11 BY MR. JERSCHIED: I'll withdraw the
12 question, your Honor.

13 BY THE COURT: Well, that's correct.

14 Q. Was there another officer involved in
15 necessarily taking you down at one point?

16 A. Another officer involved in taking me down?

17 Q. Correct.

18 A. It was a number of staff involved during that
19 situation with myself and Mr. Bobo.

20 Q. And if that was the point, Mr. Lee, that your
21 wrist was grabbed, would you really be able to identify
22 whether it was my client who grabbed it?

23 A. The incident, it's a number of staff involved
24 during that incident. That was the second incident. And
25 then on the first incident it was a few staff involved,

1 but I know Mr. Bobo came up and grabbed my wrist because
2 I was looking dead at him. It wasn't anyone else,
3 because I was talking to him as he was approaching me.

4 Q. what were y'all talking about?

5 A. We was talking about the situation that was
6 going on. He was telling me that I didn't need to know
7 what was going on. He's telling me it was a criminal
8 matter, and I told him it's about an institutional
9 matter.

10 Q. And you would agree with me that as the
11 superintendent it is your job to interview staff for
12 administrative and staff related issues, correct?

13 A. Correct.

14 Q. But you would also agree with me then that
15 law enforcement has an obligation to conduct criminal
16 investigations, correct?

17 A. Correct, but they don't have an obligation to
18 assault staff.

19 Q. So Mr. Lee, if I'm hearing this correctly,
20 this is more about assaulting the staff than it is about
21 CID investigators attempting to perform an investigation
22 or as they're performing an investigation?

23 A. I went over there because the incident was
24 reported to me. CID and the officer was having a fight
25 inside the conference room, and that's an institutional

1 matter.

2 Q. But CID doesn't report to you, correct?

3 A. Everybody that work at MSP report under the
4 superintendent indirectly. A supervisor might be at
5 central office but the superintendent run the
6 institution.

7 Q. So you're aware of every criminal
8 investigation that's ongoing at the state penitentiary?

9 BY MR. AUSTIN: Your Honor, I think this is
10 going far beyond the question of whether or not he
11 assaulted someone.

12 BY THE COURT: If that's an objection I'll
13 sustain the objection.

14 BY MR. AUSTIN: Thank you.

15 BY MR. JERSCHIED: Court's indulgence.

16 BY THE COURT: Very well.

17 BY MR. JERSCHIED: One last question, your
18 Honor.

19 BY THE COURT: Very well.

20 Q. Mr. Lee, you're familiar with use of force,
21 correct?

22 A. Correct.

23 Q. And the department --

24 BY MR. AUSTIN: Your Honor, again I object.
25 It goes beyond the scope of this hearing.

1 BY MR. JERSCHIED: Your Honor, if I may
2 respond briefly?

3 BY THE COURT: Very well.

4 BY MR. JERSCHIED: This has everything to
5 do with use of force, and Mr. Lee has alleged that
6 my client grabbed him by the wrist and attempted to
7 subdue him during the course of a criminal
8 investigation.

9 Assuming that those were the facts that are
10 not required to the Court, your Honor, my client
11 would certainly be able to cross-examine Mr. Lee on
12 matters regarding use of force in this particular
13 matter.

14 BY THE COURT: I will allow it.

15 Q. Mr. Lee, you're familiar with use of force,
16 correct?

17 A. Correct.

18 Q. And as far as any use of force that involved
19 yourself, and by that what you've alleged Investigator
20 Bobo to have committed against you, would you consider
21 that to be excessive force?

22 A. Everybody rate force differently.

23 BY MR. JERSCHIED: I have no further
24 questions, your Honor.

25 BY THE COURT: Any redirect?

REDIRECT EXAMINATION BY MR. AUSTIN:

Q. Superintendent Lee, is there anything else you wish to add?

A. Yes, sir. I would just like to add that during the course of that incident, the only reason I was only there like I prior stated, that it was reported that CID was in the conference room over at 29 assaulting an officer.

I received a call from my warden, and I was instructed by my supervisor, Mr. John Wheaton, to go over and see what was going on.

BY MR. JERSCHIED: Your Honor, I'm gonna object at this point. I'll withdraw it.

BY THE WITNESS: And once I arrived over there and wanted to speak to Mr. Rogers, the CID, directly at him and speak to find out what was going on, he told me it wasn't my business, and the officer had stated that he had been assaulted by CID.

Q. Okay. But back to the point. Your allegation is that Mr. Bobo assaulted you twice?

A. Yes, sir.

BY MR. AUSTIN: That's all we have of Mr. Lee, your Honor.

BY THE COURT: You may step down.

(WITNESS STEPS DOWN.)

BY MR. AUSTIN: We call officer Carter.

WILLIAM CARTER,

called on behalf of the State, having been duly sworn by
the clerk, was examined and testified as follows:

BY MR. AUSTIN: May I proceed?

BY THE COURT: You may.

DIRECT EXAMINATION BY MR. AUSTIN:

Q. officer Carter, would you state your full
name, please.

A. William Carter.

Q. And Mr. Carter, you work for Criminal
Investigation Division?

A. Yes, sir.

Q. And that is a law enforcement agency?

A. Yes, sir.

Q. You as well as Mr. Bobo are law enforcement
officers?

A. Yes, sir.

Q. And were you present during the incident that
Superintendent Lee was testifying about?

A. Yes, sir.

Q. Tell us what happened, what you saw?

A. On that day in question we ended up
interviewing an officer in reference to a complaint we

1 had come in about an inmate getting assaulted.

2 After questioning the officer he denied
3 assaulting an inmate, we noticed what appeared to be
4 blood on his pants, and so we told him we're gonna have
5 to have your pants for evidence.

6 Chief Rogers told him don't leave the conference
7 room so he can go out and call the director. So when
8 Chief Rogers was out he got up and went to leave and
9 Investigator Bobo told him he couldn't leave.

10 He said he was leaving. Investigator Bobo stood
11 in front of the door. He grabbed Investigator Bobo and
12 threw him out of the way. I grabbed Officer Tyler around
13 his body and pushed him into the wall trying to stop him
14 from leaving.

15 He pushed me off, and by that time Investigator
16 Bobo had done got back up, and we both was trying to
17 struggle with him telling him he wasn't going nowhere
18 with that evidence on his pants.

19 well, at that time Chief Rogers and Warden Morris
20 had entered the conference room and assisted on taking
21 him down. well, we got him on the ground and he was
22 still resisting, trying to get up, and Officer Tyler is a
23 pretty large fellow.

24 I told him, I said, quit resisting, stop
25 resisting, and then I told Warden Morris that he was

1 under arrest, he was resisting, he's failing to comply,
2 disorderly conduct, he's under arrest.

3 we advised Deputy warden Cox, I think it was, to
4 contact K9 because we had another field op agent that was
5 involved in the same incident to be interviewed in the
6 conference room -- well, in the admin building of 29. So
7 we requested the assistance of K9.

8 well, when we finally got Officer Tyler in cuffs
9 and picked him up and sat him back in the chair,
10 Superintendent Lee entered the conference room with K9.

11 And he was telling the chief he wanted to talk to
12 officer Tyler, and chief was telling him he was being
13 interviewed, this is an investigation, ongoing
14 investigation, that we got to get through doing what we
15 was doing.

16 And Superintendent Lee kept telling him, no, he's
17 gonna go with me, and Chief Rogers kept saying, no,
18 you're gonna stay here. well, it was on and on and on.

19 I did not see, you know, I don't know what
20 happened with Superintendent Lee and Bobo the first
21 incident he was talking about Bobo grabbing his wrist.

22 I do know Superintendent Lee was standing in
23 front of the door and had the door blocked and wouldn't
24 allow nobody to come in or out of the conference room.

25 At one point in time Chief left the conference

1 room to go talk to either the director or somebody, and
2 while they was gone everybody was out.

3 I was standing in the doorway of the conference
4 room and Superintendent Lee was standing on the outside
5 of the conference room and Steven Tyler was still inside
6 the conference room.

7 And he was telling Steven Tyler, come on, let's
8 go, and I blocked the door with my arm over the doorway
9 and said, no, let's just wait, he's staying in here, let
10 everybody get on the same page.

11 Superintendent Lee grabbed my arm and tried to
12 move me out of the doorway and that's when -- Bobo, I did
13 not see him come toward Superintendent Lee. I did hear
14 Investigator Bobo say, come on, Superintendent, back up.

15 Superintendent then turned around and assaulted
16 Bobo, and when he assaulted Bobo I grabbed him. When I
17 grabbed Superintendent, unknown K9, I don't know who all
18 it was, jumped on my back and we all hit the couch in the
19 conference room. At the time some K9 grabbed Bobo and
20 had him pinned on the couch in the conference room.

21 Q. So you did not see Bobo assault warden?

22 A. No, sir.

23 Q. Did you see him grab his hand, anything?

24 A. I did not see any kind of contact between
25 Superintendent and Bobo.

1 Q. So y'all were somewhat of a mess, I guess
2 would be the best description?

3 A. Yes, sir.

4 Q. And Officer Rogers was not in there when the
5 assault occurred, correct, or allegedly occurred?

6 A. He's saying two assaults. That one time when
7 he assaulted Bobo when he's saying Bobo run up to him,
8 Chief was not in the room.

9 I don't know when the other time in the
10 conference room he's replying to that Bobo grabbed him, I
11 don't know, I can't answer that.

12 Q. You actually saw the assault against Bobo
13 also?

14 A. Yes, sir.

15 BY MR. AUSTIN: Tender the witness, your
16 Honor.

17 BY THE COURT: Any cross of this witness?

18 BY MR. JERSCHIED: A couple of brief
19 points, your Honor.

20 BY THE COURT: Very well.

21 **CROSS-EXAMINATION BY MR. JERSCHIED:**

22 Q. Investigator, my name is Erich Jerscheid. I
23 represent fellow Investigator Jim Bobo. Do you recall
24 what you were investigating that day?

25 A. Yes, sir. It was an assault on an inmate.

1 Q. Do you recall the injuries that the inmate
2 sustained?

3 A. He had some, if I'm not mistaken, some marks
4 on his face and maybe the head was busted and blood
5 coming from the back of his head, top of his head
6 somewhere.

7 Q. And during the course of your investigation
8 the officer attempted to leave, correct?

9 A. Yes, sir.

10 Q. And when Superintendent Lee entered the room,
11 do you recall his attitude, his demeanor when he walked
12 in?

13 A. My opinion or -- in my opinion he was there
14 to take Steven Tyler out of the conference room.

15 Q. To your knowledge would Superintendent Lee
16 have been aware of any alleged assault committed upon
17 this particular officer at that time?

18 A. No, sir, not to my knowledge. I don't know.

19 Q. You were in the room when Officer Tyler
20 attempted to walk out, is that correct?

21 A. Yes, sir.

22 Q. And he's a large fellow?

23 A. Yes, sir.

24 Q. And at the time that Superintendent Lee
25 entered the room, do you recall anything that he might

1 have been yelling when he walked in?

2 A. Something about he didn't -- he was talking
3 to the officer and telling him something about contraband
4 or something, that you didn't bring contraband in or why
5 is he going to Sunflower County and different stuff,
6 telling him to tell us that he didn't do this and didn't
7 -- talking about the contraband.

8 Q. And you were investigating a completely
9 different matter at that time?

10 A. Yes, sir.

11 Q. Has Superintendent Lee ever served as a staff
12 advocate previously to your knowledge?

13 A. Repeat the question.

14 Q. As a staff advocate?

15 A. Talking about determining --

16 Q. As someone who would advocate -- for example
17 --

18 BY MR. AUSTIN: Your Honor, again we're
19 going so far afield. It's a criminal matter.

20 BY THE COURT: The objection is sustained.

21 Q. What was Superintendent Lee doing at the time
22 that he walked in earlier?

23 A. He just had his hand on Steven Tyler's left
24 shoulder I think it was or maybe his right -- on his
25 shoulder like he was trying to pull his shirt and Chief

1 had him by the other shoulder kind of holding him in the
2 chair.

3 Q. And Superintendent Lee was attempting to walk
4 out with him?

5 A. Yes, sir.

6 Q. What kind of shape was the room in after the
7 tussle?

8 A. The table was pushed to the side, maybe some
9 chairs turned over.

10 Q. As an investigator you're familiar with the
11 use of force?

12 A. Yes, sir.

13 Q. And based on your observations that day,
14 would you consider Investigator Bobo's actions to have
15 been excessive based on your --

16 A. No, sir.

17 BY MR. AUSTIN: Unless he's talking about
18 his actions against Superintendent Lee, it's not
19 relevant to this matter.

20 BY THE COURT: Objection is sustained.

21 BY MR. JERSCHIED: No further questions,
22 your Honor.

23 BY THE COURT: Any redirect?

24 **REDIRECT EXAMINATION BY MR. AUSTIN:**

25 Q. Officer Carter, was Tyler charged?

Kelvin Taylor - Direct

1 A. Not to my knowledge.

2 BY MR. AUSTIN: That's all I have of this
3 witness, your Honor.

4 BY THE COURT: May the witness be excused?

5 BY MR. AUSTIN: We call Kelvin Taylor.

6 BY THE COURT: You're free to go about your
7 business.

8 (WITNESS STEPS DOWN.)

9 KELVIN TAYLOR,

10 called on behalf of the State, having been duly sworn by
11 the clerk, was examined and testified as follows:

12 BY MR. AUSTIN: May I proceed, your Honor?

13 BY THE COURT: You may proceed.

14 DIRECT EXAMINATION BY MR. AUSTIN:

15 Q. would you state your name, please.

16 A. Kelvin Taylor.

17 Q. Mr. Taylor, I believe you are a K9 officer at
18 Mississippi Department of Corrections?

19 A. Yes, sir.

20 Q. You've been in court during this testimony.
21 So on the day that we were talking about the testimony
22 you have heard, is there anything that you can add or
23 tell us any differently than what has been testified to?

24 A. Only that when we arrived in the conference
25 room Superintendent Lee, he was trying to find out what

1 was going on with the officer and why he was handcuffed
2 to the chair.

3 During that time CID didn't want to tell Mr. Lee
4 what was going on or also tell him that he could leave,
5 so Mr. Lee was trying to get Officer Tyler and take him
6 out of the room so he can get him some medical attention,
7 and CID Bobo grabbed him and they ended up locking up
8 together and we ended up having to pull them apart.

9 Q. Bobo and who were locked up together?

10 A. Bobo and Superintendent Lee.

11 Q. Were they holding each other, pushing, what
12 were they doing?

13 A. They was just holding each other.

14 Q. And you helped separate them?

15 A. Yes, sir.

16 Q. And you know who grabbed who first?

17 A. CID Bobo, he grabbed Superintendent first.

18 Q. And you were not initially there, were you?

19 A. No, sir.

20 Q. You were called by CID?

21 A. No, sir. Me along with the rest of the K9,
22 we were on a previous detail, and our supervisor informed
23 us that we had to go to 29 and meet Superintendent Lee
24 over there. We had no idea what was going on at the
25 time.

1 All we knew was that we had to meet the
2 superintendent, and from there outside the gate we walked
3 over to the conference room, and that's when we saw
4 officer Tyler in the chair handcuffed along with CID all
5 in the conference room.

6 Q. Was Tyler handcuffed?

7 A. Yes, sir.

8 Q. So CID had him sitting in a chair?

9 A. Yes, sir.

10 BY MR. AUSTIN: Tender the witness, your
11 Honor.

12 BY THE COURT: Any cross-examination of
13 this witness?

14 BY MR. JERSCHIED: Two questions, your
15 Honor.

16 CROSS-EXAMINATION BY MR. JERSCHIED:

17 Q. Mr. Jackson? It's Kelvin, right?

18 A. Yes, sir.

19 Q. Okay. When you first started testifying, I
20 believe you made a statement that CID did not want to
21 tell you what was going on, is that correct?

22 A. They didn't want to tell Superintendent Lee
23 what was going on.

24 Q. And to your knowledge, does anybody from CID
25 report directly to the superintendent?

Larry Craig - Direct

1 A. I wouldn't have any knowledge of that.

2 BY MR. JERSCHIED: No other questions, your
3 Honor.

4 BY THE COURT: Any redirect?

5 BY MR. AUSTIN: No, sir.

6 BY THE COURT: May the witness be excused?

7 BY MR. AUSTIN: Yes, sir.

8 BY MR. JERSCHIED: Yes, sir.

9 BY THE COURT: You're free to go about your
10 business.

11 (WITNESS STEPS DOWN.)

12 BY MR. AUSTIN: We call Officer Larry
13 Craig.

14 **LARRY CRAIG,**

15 called on behalf of the State, having been duly sworn by
16 the clerk, was examined and testified as follows:

17 BY MR. AUSTIN: May I proceed, your Honor?

18 BY THE COURT: You may.

19 **DIRECT EXAMINATION BY MR. AUSTIN:**

20 Q. State your name, please.

21 A. Larry Craig.

22 Q. And Officer Craig, you're part of the K9 unit
23 at Parchman?

24 A. Yes, sir.

25 Q. And you were present for this incident we

1 have been here today talking about, is that correct?

2 A. That's correct.

3 Q. Did you see anything different than what's
4 been testified to earlier?

5 A. No, sir.

6 Q. Okay. So you saw Bobo and Lee grab each
7 other?

8 A. Yes, sir.

9 Q. You see any other touching by either one of
10 them?

11 A. On the first incident Superintendent Lee said
12 we need to get this officer some attention, medical
13 attention. So when we got ready to get him up CID Bobo
14 ran over and grabbed Mr. Lee's wrist.

15 Q. And what did Superintendent Lee do?

16 A. He told CID Bobo to keep his hands off of
17 him.

18 Q. Did you see Officer Bobo or Superintendent
19 Lee touching each other at any other time?

20 A. I only heard on that second incident what
21 happened out there in the lobby.

22 Q. Were they outside your presence?

23 A. I was in the front.

24 Q. Anything else you want to add?

25 A. No, sir.

1 BY MR. AUSTIN: Tender the witness, your
2 Honor.

3 BY THE COURT: Any cross of this witness?

4 BY MR. JERSCHIED: Two questions, your
5 Honor.

6 **CROSS-EXAMINATION BY MR. JERSCHIED:**

7 Q. Officer, I believe earlier you testified that
8 Mr. Bobo grabbed the superintendent, is that correct?

9 A. Yes, sir.

10 Q. And did you also grab my client as well
11 during that time?

12 A. Pushed him back, separated both of them,
13 pushed both of them back, Superintendent Lee and CID
14 Bobo.

15 Q. And so at no time did you grab my client?

16 A. No, sir.

17 Q. And did you see who grabbed first?

18 A. CID Bobo.

19 Q. I believe you've testified that
20 Superintendent was standing at the door?

21 A. Standing right there on the side, not in
22 front of the door, right there where Officer Tyler was
23 at.

24 Q. And that was at the time Superintendent Lee
25 attempted to exit the room with Officer Tyler?

1 A. Yes, sir.

2 BY MR. JERSCHEID: No further questions,
3 your Honor.

4 BY THE COURT: Any redirect?

5 BY MR. AUSTIN: No, sir.

6 BY THE COURT: May the witness be excused?

7 BY MR. AUSTIN: Yes, sir.

8 BY MR. JERSCHEID: Yes, sir.

9 BY THE COURT: You're free to go about your
10 business.

11 (WITNESS STEPS DOWN.)

12 BY MR. AUSTIN: We rest, your Honor.

13 BY THE COURT: You rest?

14 BY MR. AUSTIN: Yes.

15 BY THE COURT: Any testimony by the
16 defendant?

17 BY MR. JERSCHEID: Well, your Honor, at the
18 time we move ore tenus to dismiss the charges, and
19 pending that motion, of course, we would reserve
20 our right to call rebuttal witnesses that have been
21 here in the courtroom.

22 BY THE COURT: I'm going to overrule the
23 motion at this time. I have your earlier motion to
24 dismiss under advisement. You may proceed.

25 BY MR. JERSCHEID: Your Honor, at this time

1 we would call Chief Investigator Rogers.

2 **JOHN D. ROGERS,**

3 called on behalf of the respondent, having been duly
4 sworn by the clerk, was examined and testified as
5 follows:

6 **DIRECT EXAMINATION BY MR. JERSCHIED:**

7 Q. You mind if I call you Chief Rogers?

8 A. That's fine.

9 Q. Chief, my name is Erich Jerscheid. I
10 represent Investigator Bobo. Now, why don't you start by
11 telling the Court a little bit about yourself, start with
12 your name and what kind of background you have.

13 A. John D. Rogers. I've been working at
14 Parchman since 1989. Prior to that I was a police
15 officer for the city of Drew.

16 When I went to work at MSP Parchman I went in the
17 K9 unit. I was there for almost 16 years, left there and
18 went as a deputy warden to the max unit, and then I
19 believe it was May 2009 I went to CID as the
20 investigative chief.

21 Q. So you've been in charge of investigations at
22 Mississippi State Penitentiary for seven or eight years
23 now?

24 A. Yes, sir, that would be about right.

25 Q. And we're here regarding events that occurred

1 on November 21st of 2016. Do you recall those events?

2 A. Yes, sir, I do.

3 Q. why don't you tell the Court what you
4 observed that day?

5 A. All right. Prior to my arrival to Unit 29 we
6 received a complaint from a defendant's mother. She made
7 the allegation that her son allegedly had been assaulted
8 by two staff members.

9 So I dispatched CID James Bobo and William
10 Carter, both investigators, to the scene to find out if
11 it was true, any merit to the allegation.

12 I guess they had been out there for about 20
13 minutes or so maybe, and I decided to give them a call,
14 and I called, and I forgot which one I talked to, and I
15 asked him was it any merit to it. They said, yes, he's
16 got blood on his clothing, so I decided to go on out.

17 when I got there we conducted a couple of
18 interviews. We wound up getting one of the two suspects
19 and interviewed him. He denied the allegations. He was
20 questioned under Miranda.

21 we asked him to let us look at his clothing.
22 During that time frame Mr. Bobo spotted what he thought
23 and when I looked at it what appeared to be physical
24 evidence to go along with this alleged assault.

25 So when I saw that I told the suspect officer, I

1 said, sit in this chair, do not go anywhere, and I
2 stepped out of the conference room and I went to Deputy
3 Warden Andy Mills' room to call Director Smith, and I
4 told him what we had.

5 And while I just got off the phone with him I
6 heard the commotion start off in the conference room. It
7 was a lot of racket and I could tell things was getting
8 tossed around, and I took my glasses off and my hat, I
9 didn't want my glasses broken.

10 when I entered the room I saw them struggling
11 with the suspect staff member, and Mr. Bobo advised me
12 that he had been assaulted and he had placed him under
13 arrest, told him he's under arrest, so I helped. We
14 subdued the officer. It took a little bit. He's pretty
15 strong.

16 We got cuffs on him and I sat him in the chair.
17 Warden Morris was in there. I don't know if he was in
18 there prior to my entry, I just can't remember, but I
19 know he was there to witness a lot of it.

20 And at that point we had another staff suspect
21 that was being held up in Warden Morris' office, and
22 we're talking about two doors down from the conference
23 room, and I got concerned then.

24 well, we had to grapple with this one and maybe
25 the other one would have to be grappled with so I told

1 Warden Morris -- well, I asked him, I said, can you get
2 K9 out here to sit with this suspect because we got the
3 other one.

4 Q. Let me just ask you a brief question on that,
5 Chief Rogers. As CID y'all are considered law
6 enforcement?

7 A. That's correct.

8 Q. And by statute you are authorized to request
9 K9 to facilitate any narcotics detections or any other
10 matters related to tracking down inmates who run off?

11 A. Right. well, actually if we have a matter
12 that pertains to a CID function we can request K9.

13 Q. And at that time you needed K9?

14 A. Right. I just wanted them to pull security
15 on the suspect officer because he had become combative.
16 And anyway, he was sitting in the chair and I looked at
17 him and I told him I said -- I called him by his name and
18 I said, listen, do not go down this road. I said, do not
19 go down this road.

20 I said, we just had another officer in a similar
21 case at that same unit, 29, the Friday before the 21st I
22 believe it was, pled guilty in the Northern District for
23 -- I think his charge was conspiracy to cover up an
24 investigation, hinder an investigation, and he's supposed
25 to be sentenced, I think, this Thursday in the Northern

1 District. There was three other suspects in that.

2 So I said, do not go down this road. I said,
3 this particular officer had the opportunity in my office
4 to tell the truth about that incident. I said, he did
5 not, and I was telling this to our suspect.

6 I said, do not go down that road. I said, tell
7 the truth. And I asked him was he willing to recant his
8 statement and asked him at that time was he willing to
9 relinquish his clothing and his boots; he agreed to it.

10 And about that time that's when Superintendent
11 Lee come up in there with his K9. He came in the door,
12 grabbed the suspect by the sleeve, his K9 encircled us
13 and told him to come on. I said, Mr. Lee, he's a suspect
14 in a criminal investigation.

15 And he said, I don't care what's going on, I'm
16 gonna talk to this officer or something along those
17 lines, and he kept trying to pull him up out of the
18 chair.

19 well, his legs were separating the suspect, so I
20 just kind of stood up. I encroached his position, and a
21 bunch of grappling happened behind me, K9 and my staff
22 members. I couldn't see.

23 I had ahold of the suspect and I heard somebody
24 back there snapping pictures with a phone, and I looked
25 back, and I'm pretty sure I remembered it being Sergeant

1 Leather williams snapping all kind of pictures.

2 well, anyway, it became a stalemate. The
3 superintendent grabbed the doorknob. Mr. Bobo, I told
4 him, I said, go call Director and tell him what's
5 happening. Mr. Lee wouldn't let him out.

6 Mr. Bobo said, Mr. Lee, can I please leave out or
7 something of that nature, and he asked him again, can you
8 let me out. Anyway, there's an audiotape that Mr. Bobo
9 started recording during the middle of this process, and
10 you will clearly hear me tell Mr. Lee, I asked him why
11 was he interfering with our investigation.

12 He was informed immediately when he walked in the
13 room to grab our suspect and take him out because he's a
14 suspect in an alleged assault of an inmate and he had
15 what appeared to be physical evidence on his clothing.

16 But he came in and bogarted the situation and
17 tried to remove the suspect. During that time -- and
18 this is gonna be on the audiotape as well, you'll hear me
19 saying, tell him, Officer Tyler, tell him, Officer Tyler,
20 this is about you, not him, and that's where the
21 recording started.

22 what I was referring to at that moment, I was
23 trying to get him to tell the superintendent that he
24 agreed to recant his testimony and tell the truth and go
25 down the correct road on that investigation.

1 Superintendent Lee began leading him and asking
2 him questions about, you assault anybody, you bring any
3 contraband and all these kind of things, you know,
4 coaching him on his responses against us.

5 Q. And Chief Rogers, let me ask you one brief
6 question. Officer Tyler had already waived his Miranda?

7 A. He signed a Miranda sheet, and when I asked
8 him would he be willing to recant his statement when I
9 told him the part about the other officer, he agreed, and
10 if I'm not mistaken Warden Morris should have been a
11 witness to that and Mr. Carter and Mr. Bobo.

12 But he was ready to recant to some degree if not
13 a full degree. Mr. Lee started questioning him and
14 asking him. He realized, it was obvious, and you can
15 tell it when you listen to the audiotape that he knew the
16 superintendent was there for him, and he did a complete
17 180 and started accusing us of all this and all that.

18 So to a degree the Superintendent's actions
19 compromised our investigation at that point, because I
20 believe in my heart I would have already had a recanted
21 testimony from that suspect.

22 Q. Based on your experience as well and the 27
23 years experience that you had being at the state
24 penitentiary and from your time being on the road, did
25 you observe Officer Tyler demonstrate body language that

1 he was prepared to come forward with was --

2 A. He sat there nodding his head. He was
3 sitting in the chair. Everything was under control, but
4 the superintendent came in there with an agenda to remove
5 our suspect to take him elsewhere.

6 My main concern at that point, I knew if I let
7 him take him out that the chances of maintaining control
8 of the clothing that we wanted to have processed for
9 physical evidence was not gonna happen.

10 So at that point, some point in there
11 Superintendent Lee did step out and leave. Mr. Bobo went
12 and called, the phone got transferred back to the
13 conference room and I was talking to my director.

14 Q. At any time did you observe Investigator Bobo
15 put his hands on Superintendent Lee?

16 A. I don't recall him actually touching him.
17 You'll hear this in the recording, something to the
18 effect Mr. Lee was saying don't put your hands on me.
19 Mr. Bobo said, I don't have him, he's got me.

20 And I may or may not have said don't touch him.
21 I didn't want Mr. Bobo touching Superintendent. I don't
22 know. All I know is when that part of this situation
23 broke up, Mr. Bobo did show me his wrist and I saw
24 fingernail marks in his skin and we have pictures of
25 those.

1 Q. Some of the points that the superintendent
2 was making when he first entered the room, I believe
3 earlier you made a statement along the lines regarding
4 contraband?

5 A. He was asking the suspect officer did you
6 bring any contraband or something along those lines. It
7 didn't have anything to do with what we were doing. I
8 clearly advised him that we were investigating that
9 suspect officer for the alleged assault of an inmate.

10 Q. Do you recall if Superintendent Lee during
11 that time period suggested to Officer Tyler that it was
12 good that y'all were only there for an inmate assault?

13 A. He made some kind of comment like that.
14 During the time when Mr. Bobo was asking to leave out,
15 Tyler made a remark, y'all didn't let me leave, and the
16 superintendent remarked, thank you, in a real arrogant
17 tone, and it was obvious to me that he was there to
18 rescue that staff member at all costs.

19 Q. Do you recall, Chief, how long y'all had been
20 involved in the investigation?

21 A. The investigation probably prior to the
22 superintendent and the K9 unit's arrival, he was our
23 third witness to interview, probably maybe an hour. I'm
24 not 100 percent sure.

25 Q. And it's your obligation as the chief to

1 ensure that your investigators preserve the integrity of
2 the investigation?

3 A. That's absolutely correct.

4 Q. And who do you report to, Chief?

5 A. My supervisor is Director Sean Cason Smith
6 out of central office, director of corrections
7 investigations.

8 Q. From your experience in the event that there
9 is any internal investigation that's conducted on any
10 particular CID officer at the unit level, are these
11 generally handled at the state level?

12 A. That would be by our integrity investigators
13 assigned to central office per the direction of Director
14 Smith or the commissioner.

15 Q. And to your knowledge was an investigation
16 conducted in this case?

17 A. It was conducted.

18 BY MR. JERSCHIED: I have no other
19 questions, your Honor.

20 BY THE COURT: Any cross of this witness?

21 BY MR. AUSTIN: Yes, sir.

22 **CROSS-EXAMINATION BY MR. AUSTIN:**

23 Q. Officer Rogers, you've been there 30 years
24 almost. You ever had superintendents come?

25 A. Sir, I can barely hear you.

1 Q. You ever had superintendents come during the
2 middle of your investigation?

3 A. That's the first time that I can recall a
4 superintendent interfering with an investigation.

5 Q. Was Tyler charged?

6 A. That investigation was picked up by our
7 integrity division, and from what I understand the
8 Federal Bureau of Investigation Department of Justice
9 should pick it up in the Northern District.

10 Q. And also you were asked if CID or Central CID
11 Integrity conducted an investigation, and I believe your
12 answer was yes?

13 A. That's correct.

14 Q. And I believe the report states that they
15 found no wrongdoing?

16 A. That's what I was told, yes, sir.

17 BY MR. AUSTIN: Okay. That's all I have,
18 your Honor.

19 BY THE COURT: Any redirect?

20 BY MR. JERSCHIED: No, your Honor.

21 BY THE COURT: May this witness be excused?

22 BY MR. JERSCHIED: Yes, sir.

23 BY THE COURT: You're free to go about your
24 business.

25 (WITNESS STEPS DOWN.)

Cole Terrell - Direct

1 BY THE COURT: You may call your next
2 witness.

3 BY MR. JERSCHIED: Your Honor, we would
4 call Cole Terrell to the stand.

5 COLE TERRELL,
6 called on behalf of the respondent, having been duly
7 sworn by the clerk, was examined and testified as
8 follows:

9 DIRECT EXAMINATION BY MR. JERSCHIED:

10 Q. Investigator Terrell?

11 A. Yes, sir.

12 Q. If you don't mind, I'll just call you
13 Investigator Terrell.

14 A. That's fine.

15 Q. My name is Erich Jerscheid and I represent
16 Mr. Bobo here, and we're here before the Court regarding
17 events that occurred on or about November 21st, 2016.
18 Now, tell the Court about yourself, who do you work for
19 and what do you do?

20 A. I work for Mississippi Department of
21 Corrections. I'm part of the CID division out of Central
22 Office Integrity Division.

23 Q. And y'all operate it like internal affairs
24 investigators?

25 A. Yes, sir.

1 Q. Is that for the entire department or just for
2 CID?

3 A. No, it's for the entire department.

4 Q. And in the event that there's a complaint
5 made or an investigation into a CID officer at any
6 facility level, y'all are the ones who handle it?

7 A. At the direction of the director, yes.

8 Q. And who's the director?

9 A. Sean Smith.

10 Q. And regarding the events of November 21st,
11 2016, do you recall conducting an investigation?

12 A. Yes, sir.

13 Q. And based on your investigation, can you tell
14 the Court your findings?

15 A. I would have to refer to my report for the
16 complete and by the letter of my report findings, but
17 basically through the course of interviewing numerous
18 people, numerous officers, staff investigators, it was
19 determined that -- well, it couldn't be determined that
20 Investigator Bobo ever touched Superintendent Lee.

21 Q. And based on this investigation, do you
22 recall how many individuals you interviewed?

23 A. It was a number of them. No, sir.

24 Q. Is there anything that might help refresh
25 your memory?

Cole Terrell - Direct

1 A. My report would be great.

2 BY MR. JERSCHIED: Your Honor, may I
3 approach the witness?

4 BY THE COURT: You may. What's your name?

5 BY THE WITNESS: Cole Terrell.

6 Q. Investigator Terrell, I just handed you a
7 document, do you recognize that?

8 A. Yes, sir.

9 Q. And what do you recognize that document to
10 be?

11 A. That is gonna be the memo that I completed
12 after the investigation.

13 Q. And that memo was authored by you?

14 A. Yes, sir.

15 Q. And is it a fair and accurate depiction of
16 the investigation?

17 A. From everything I can gather, yes, sir.

18 BY MR. JERSCHIED: And your Honor, at this
19 time I would move to have that memo placed into
20 evidence?

21 BY THE WITNESS: Can I say one thing.
22 There's four pages of this. The fourth page is
23 missing.

24 BY MR. AUSTIN: I have no objection, your
25 Honor.

1 BY THE COURT: Let it be marked and
2 received into evidence, assuming they can find the
3 fourth page.

4 BY MR. JERSCHIED: Do you recall what was
5 on that fourth page?

6 BY THE WITNESS: It's just one line on the
7 fourth page.

8 BY THE COURT: We'll allow it with the
9 three pages if he recite what the line was. We'll
10 see what we can do with that.

11 BY THE WITNESS: You want me to tell you
12 basically what the last line was?

13 Q. Please.

14 A. In short it was basically saying that any
15 evidence as far as photos of the injuries sustained to
16 the inmate as well as the officers were available upon
17 request.

18 (EXHIBIT 1, REPORT, WAS MARKED AND RECEIVED
19 INTO EVIDENCE.)

20 Q. And to your knowledge did Superintendent Lee
21 have an evaluation of his injuries?

22 A. To my knowledge, no, sir.

23 Q. And I direct your attention to the bottom of
24 page 3. I believe you discussed some key factors?

25 A. Yes, sir.

1 Q. why don't you tell the Court about those.
2 You can just summarize it because it's been entered into
3 evidence.

4 A. In summary, CID was conducting a lawful
5 investigation. At the point that evidence was
6 discovered, potential evidence was discovered on the
7 officer's clothing, the CID investigators were then
8 detaining the officer pending the retrieval of that
9 evidence.

10 Q. And CID officers would have had an obligation
11 to preserve that evidence?

12 A. Yes, sir.

13 Q. And the integrity of any investigation is
14 key?

15 A. Absolutely.

16 BY MR. JERSCHIED: I have no other
17 questions, your Honor.

18 BY THE COURT: Any cross of this witness?

19 BY MR. AUSTIN: Yes, sir.

20 **CROSS-EXAMINATION BY MR. AUSTIN:**

21 Q. officer, did you interview Superintendent
22 Lee?

23 A. No, sir, I did not.

24 Q. Did you interview all the witnesses that come
25 here this morning? Did you interview those two K9

1 officers?

2 A. I don't recall interviewing them, no, sir. I
3 had assistance investigating.

4 Q. Were there conflicting statements between the
5 witnesses that were interviewed?

6 A. Absolutely.

7 Q. So the conclusions in that report is you
8 making a decision as to what you thought was credible and
9 believable and who was telling the truth?

10 A. No, sir. That would have been just my
11 opinion. Basically this was an investigation that
12 started, and through the course of the initial part it
13 was determined that everybody needed to be reinterviewed
14 again because there were so many conflicting statements.

15 And at that point we were asked not to interview
16 Superintendent Lee or Chief Rogers. So we took what we
17 had from recorded interviews from Chief Rogers as well as
18 Superintendent Lee, both over an hour long with other
19 investigators and then put that with the other interviews
20 with Warden Morris and other key people in the
21 investigation, and through the entire investigation
22 nobody could say for sure that they even saw Investigator
23 Bobo touch Superintendent Lee.

24 Q. So you authored the report, is that correct?

25 A. Yes, sir.

1 Q. So you made the decisions?

2 A. I wrote the report down.

3 BY MR. AUSTIN: That's all. Thank you.

4 BY THE COURT: Any redirect?

5 BY MR. JERSCHIED: One question, your

6 Honor.

7 **REDIRECT EXAMINATION BY MR. JERSCHIED:**

8 Q. Officer Cole, just a minute ago you testified
9 that you did not interview Chief Rogers nor
10 Superintendent Lee?

11 A. Correct.

12 Q. And that was a directive?

13 A. Yes.

14 Q. And who gave that directive?

15 A. The executive staff.

16 Q. And that video, was that done before, after,
17 that you had an opportunity to interview the individuals
18 that were here?

19 A. Excuse me?

20 Q. When you conducted that video interview, was
21 that after you had interviewed the individuals here or
22 was it prior?

23 A. The video interview of Superintendent Lee and
24 Chief Rogers, those were conducted by other investigators
25 at our central office on I guess the 22nd and -- yeah.

1 Q. And you reviewed both of those videos?

2 A. I didn't watch the video. I listened to the
3 audio.

4 Q. Of both Chief Rogers and Superintendent Lee?

5 A. Yes.

6 Q. And you stand by your conclusions in this
7 report?

8 A. Yes, sir.

9 BY MR. JERSCHIED: No other questions, your
10 Honor.

11 BY THE COURT: May the witness be excused?

12 BY MR. JERSCHIED: Yes, please.

13 BY THE COURT: You're free to go about your
14 business.

15 (WITNESS STEPS DOWN.)

16 BY THE COURT: You may call your next
17 witness.

18 BY MR. JERSCHIED: Your Honor, we would
19 last call Sean Smith.

20 SEAN SMITH,
21 called on behalf of the respondent, having been duly
22 sworn by the clerk, was examined and testified as
23 follows:

24 BY MR. JERSCHIED: May I proceed, your
25 Honor?

Sean Smith - Direct

BY THE COURT: You may.

DIRECT EXAMINATION BY MR. JERSCHIED:

Q. Director Smith, good morning.

A. Good morning.

Q. My name is Erich Jerscheid and I represent Jim Bobo, and we're here before the Court today on the affidavit that was filed by the superintendent, and it's getting to be about lunchtime, so I'll keep it pretty short.

A. Appreciate it.

Q. Director Smith, as the director for CID your job is -- tell us a little bit about your job.

A. Being the director of CID I oversee and supervise and review investigations that happen throughout the state whether they're at the three institutions or they're at the integrity level which is at central office. I direct, assign, review and approve cases.

Q. And your decision on those cases is based on the investigations conducted by your integrity investigators?

A. Yes, and also the internal affairs coordinators, yes.

Q. And do you recall a memorandum regarding Jim Bobo that was authored by Cole Terrell?

Sean Smith - Direct

1 A. Yes.

2 Q. And have you recently reviewed that memo?

3 A. I have not recently reviewed it, no, sir.

4 Q. Do you recall some of the details off of it
5 that jumped out to you?

6 A. Not that I can testify without looking back
7 at it, no, sir.

8 Q. Would that help refresh your recollection?

9 A. Yes.

10 BY MR. JERSCHIED: May I approach, your
11 Honor?

12 BY THE COURT: You may.

13 BY MR. JERSCHIED: Your Honor, I would ask
14 that the director reflect on -- I believe it's
15 Plaintiff's 1.

16 Q. Director Smith, I just handed you a document
17 -- well, it's already been admitted into evidence, so we
18 will strike that, please.

19 Director Smith, I would like to draw your
20 attention to the top left-hand corner of that first page.
21 Can you tell us what that says?

22 A. At the top left-hand corner it says closed
23 and it has my signature and the date that it was closed.

24 Q. So this matter was investigated, considered
25 -- or it was investigated for facts, correct?

1 A. Correct.

2 Q. And it was closed January 9th?

3 A. Correct.

4 Q. And without going too far into detail, your
5 job as the director is to make administrative decisions
6 regarding your CID investigators?

7 A. Yes.

8 Q. And by administrative decisions that also
9 includes employment decisions, correct?

10 A. Yes.

11 Q. And Investigator Bobo is still with CID?

12 A. Yes.

13 Q. And so you've already made a decision on this
14 case, correct?

15 A. Yes.

16 BY MR. JERSCHEID: I have no other
17 questions, your Honor.

18 BY THE COURT: Any cross-examination of
19 this witness?

20 BY MR. AUSTIN: Yes, sir.

21 **CROSS-EXAMINATION BY MR. AUSTIN:**

22 Q. Director Smith, you realize your decisions
23 are not binding on this Court?

24 A. Yes.

25 Q. And your decisions were made on reports

1 gathered by some of your officers?

2 A. That's correct.

3 Q. And are you aware that we're here not for a
4 trial on Mr. Bobo but to determine probable cause, that
5 is, that Superintendent Lee was probably assaulted and if
6 he in fact were then it was Mr. Bobo who probably did it?

7 A. I understand that's the reason we're here,
8 yes, sir.

9 Q. So based upon what you were told, you don't
10 believe there's probable cause, but you were not one of
11 the persons who actually interviewed any of those
12 witnesses?

13 A. That is correct.

14 Q. And you heard the officer just prior to you
15 state there were conflicting statements?

16 A. Yes, sir. When Mr. Cole was sent out this
17 determined to be a preliminary inquiry as to finding out
18 the exact facts of what transpired and so forth, and when
19 he came back he was able to provide the preliminary
20 issues of everybody that he had interviewed. And yes, it
21 did show that there were some conflict, yes, sir.

22 BY MR. AUSTIN: That's all I have, your
23 Honor.

24 BY THE COURT: Any redirect?

25 BY MR. JERSCHIED: No, your Honor.

John Hunt - Direct

1 BY THE COURT: May the witness be excused?

2 BY MR. JERSCHIED: Yes, your Honor.

3 BY THE COURT: You're free to go about your
4 business.

5 (WITNESS STEPS DOWN.)

6 BY THE COURT: Anything further?

7 BY MR. JERSCHIED: Your Honor, at this time
8 we would call Investigator John Hunt.

9 JOHN HUNT,

10 called on behalf of the respondent, having been duly
11 sworn by the clerk, was examined and testified as
12 follows:

13 DIRECT EXAMINATION BY MR. JERSCHIED:

14 Q. Investigator Hunt, how are you, sir?

15 A. Fine.

16 Q. Investigator Hunt, tell the court a little
17 bit about yourself, what you do, where you work?

18 A. My name is John Hunt, CID investigator,
19 integrity investigator with central office. I've been an
20 integrity investigator with the Department of Corrections
21 just over 10 years.

22 Q. And do you have prior law enforcement
23 experience?

24 A. Yes, sir, three years with Flowood Police
25 Department.

1 Q. And during your employment you came across my
2 client's name, James Bobo?

3 A. Yes, sir.

4 Q. And did you assist Investigator Terrell with
5 that investigation?

6 A. I did.

7 Q. Can you tell the Court about some of your
8 findings?

9 A. Well, as stated, due to conflicting
10 statements we were told to go back and conduct a further
11 investigation without interviewing Chief Rogers or
12 Superintendent Lee.

13 Q. And so the conflicting statements weren't
14 necessarily anything that Chief Rogers and Superintendent
15 Lee stated before, that the conflict was kind of below,
16 if you will?

17 A. Yes, sir.

18 Q. And as an integrity investigator I believe
19 earlier it was testified to that y'all operated kind of
20 as internal affairs for CID?

21 A. Yes, sir.

22 Q. And for the entire department as well?

23 A. Correct.

24 Q. When you're called, right?

25 A. Yes, sir.

1 Q. Okay. Do you have anything else to add to
2 what Investigator Terrell testified to?

3 A. No, sir, I don't believe.

4 Q. Did you assist in preparing the report?

5 A. No, sir.

6 Q. But you did participate in the investigation?

7 A. Yes, sir.

8 Q. Assisted in making findings of fact?

9 A. Yes, sir.

10 Q. And provided those findings to Investigator
11 Terrell?

12 A. Yes, sir.

13 BY MR. JERSCHIED: I have no other
14 questions, your Honor.

15 BY THE COURT: Any cross of this witness?

16 BY MR. AUSTIN: Yes, sir, just a couple.

17 **CROSS-EXAMINATION BY MR. AUSTIN:**

18 Q. You stated that you were instructed not to
19 reinterview Lee or Rogers?

20 A. Yes, sir.

21 Q. You interviewed other people because of
22 conflicts?

23 A. Yes, sir.

24 Q. Wasn't it obvious that Lee had conflicts
25 with some of those other people?

1 A. I mean, quite possibly. We were going off
2 our instruction, and some of the officers that were
3 interviewed by us at central office, members of the K9
4 team, initially saying they witnessed Investigator Bobo
5 grab Superintendent Lee.

6 After going into the investigation none could
7 actually say they actually saw him, they just assumed
8 that he grabbed Superintendent Lee.

9 BY MR. AUSTIN: Okay. I have nothing
10 further, your Honor.

11 BY THE COURT: Any redirect?

12 BY MR. JERSCHIED: Court's indulgence. No,
13 your Honor.

14 BY THE COURT: May the witness be excused?

15 BY MR. JERSCHIED: Yes, your Honor.

16 BY THE COURT: You're free to go about your
17 business.

18 (WITNESS STEPS DOWN.)

19 BY THE COURT: You may call your next
20 witness.

21 BY MR. JERSCHIED: I believe we're done,
22 your Honor.

23 BY THE COURT: You rest?

24 BY MR. JERSCHIED: Yes, your Honor.

25 BY THE COURT: Does the State offer any

1 rebuttal?

2 BY MR. AUSTIN: No, sir.

3 BY THE COURT: Anyone want to make a
4 statement?

5 BY MR. AUSTIN: No, sir.

6 BY MR. JERSCHIED: No, sir.

7 BY THE COURT: All right. I'll take the
8 matter under advisement. I'll get y'all a ruling
9 as soon as I can. Does anyone have anything
10 further?

11 BY MR. AUSTIN: No, sir.

12 BY THE COURT: If nothing further court is
13 adjourned.

14 (CONCLUDED 12:01 P.M.)
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R E P O R T E R ' S P A G E

I, Trudie Quinn, in and for the State of Mississippi, the officer, before whom this sworn testimony was taken, do hereby state on the record:

That due to interaction in the spontaneous discourse of this proceeding, dashes (--) have been used to indicate pauses, changes in thought, and/or talk-overs; that same is the proper method for a court reporter's transcription of proceeding; that the dashes (--) do not indicate that words or phrases have been left out of this transcript, and that any words and/or names which could not be verified through reference material have been denoted with the phrase (phonetic).

* * *

COURT REPORTER'S CERTIFICATE

I, Trudie Quinn, Official Court Reporter for the Fourth Circuit Court District of the State of Mississippi, do hereby certify that to the best of my skill and ability I have reported the proceedings had and done in the matter of James Bobo, on the docket of the Circuit Court of the Fourth Judicial District of Washington County, Mississippi, and that the above and foregoing 68 pages contain a true, full and correct transcript of my stenographic notes and tape taken in said proceedings.

I do further certify that my certificate annexed hereto applies only to the original and certified transcript and electronic disks. The undersigned assumes no responsibility for the accuracy of any reproduced copies not made under my control or direction.

This the 8th day of May 2017.



TRUDIE QUINN
Official Court Reporter
CCR Number 1368